

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MCMILLAN DATA COMMUNICATIONS,
INC.,

Plaintiff,

v.

AMERICOM AUTOMATION SERVICES,
INC., et al.,

Defendants.

Case No. 14-cv-03127-JD

**ORDER REQUESTING BRIEFING ON
FORUM NON CONVENIENS**

This case is an effort by McMillan Data Communications to collect money that it claims it's owed by AmeriCom Automation Services and two individuals for work McMillan performed in renovating a federal building in San Francisco, California, pursuant to a subcontract with AmeriCom. McMillan filed suit in this Court on July 10, 2014. *See* Dkt. No. 1. None of the defendants appeared, and the clerk entered default against AmeriCom on August 19, 2014, *see* Dkt. No. 17, and against the other defendants on August 28, 2014, *see* Dkt. No. 23. On October 14, 2014, McMillan moved for default judgment. *See* Dkt. No. 27.

McMillan's subcontract with AmeriCom contains a forum-selection clause:

This Agreement shall be governed by a construed in accordance with the laws of the State of New Mexico. Jurisdiction and venue for any dispute should be in 3rd Jurisdiction in the State of New Mexico.


Subcontract ¶ 10.2, Dkt. No. 27-3. The Court orders McMillan to explain why default should not be lifted and this action dismissed on *forum non conveniens* grounds in favor of New Mexico state court. As the Supreme Court has recently held, "a valid forum-selection clause [should be] given controlling weight in all but the most exceptional cases," while "the plaintiff's choice of forum merits no weight." *Atlantic Marine Constr. Co. v. U.S. Dist. Court*, 134 S. Ct. 568, 581 (2013)

(alteration in original). The subcontract between McMillan and AmeriCom contemplates that any lawsuits arising under it -- like this one -- be brought in New Mexico's Third Judicial District Court. The Court is therefore inclined to lift the defaults and dismiss the case. A motion by defendants is not necessary to do so. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991); *Seagal v. Vorderwuhlbecke*, 162 F. App'x 746, 748 (9th Cir. 2006).

If McMillan objects to the dismissal, it should file a statement of no more than five pages explaining why by April 17, 2015.

IT IS SO ORDERED.

Dated: April 10, 2015



JAMES DONATO
United States District Judge